

For these reasons, the ED respectfully requests the ALJ consider the ED's exceptions above. A copy of the Proposed Order with the recommended modifications is attached.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark Vickery
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Kathleen Decker, Division Director
Litigation Division

by 

Jennifer Cook
State Bar of Texas No. 00789233
Stephanie Frazee
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Litigation Division, MC 175
P. O. Box 13087
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(512) 239-1873
(512) 239-3434 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2010, the original and seven (7) copies of the foregoing document was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas. The document was also filed electronically.

I further certify that on this day a true and correct copy of the foregoing document was served as follows:

The Honorable Tommy L. Broyles
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1 649
512.475.4993
512.322.2061 (fax)

Via facsimile

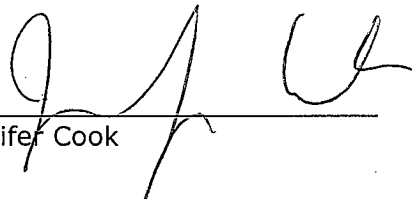
Mr. Syed Ali
Chevron HP #333
8003 Antoine Drive
Houston, Texas 77088-4301
afziaali@hotmail.com

Via electronically and certified mail
Article No. 7010 0290 0002 7775 6591

Mr. Mohammed Ahmed,
Registered Agent and President
Ahmed Realty GP, L.L.C.
13648 Highway 249
Houston, Texas 77086
hiba_inc@yahoo.com

Via electronically and certified mail
Article No. 7010 0290 0002 7775 6607

I further certify that on this day a true and correct copy of the foregoing was delivered electronically to the Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



Jennifer Cook

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF PUBLIC HEARING ON ASSESSMENT OF ADMINISTRATIVE PENALTIES AND REQUIRING CERTAIN ACTIONS OF

ALI SYED aka SYED ALI dba CHEVRON HP #333
SOAH Docket No. 582-09-3850
TCEQ Docket No. 2006-1471-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. – July 9, 2009
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Third Amended Preliminary Report and Petition mailed February 27, 2009 concerning assessing administrative penalties against and requiring certain actions of Ali Syed a/k/a Syed Ali dba Chevron HP #333, for violations in Harris County, Texas, of: 30 Tex. Admin. Code § 115.242(3), 30 Tex. Admin. Code §§ 334.7(d)(3), 334.50(b)(1)(A), 334.50(b)(2), and 334.50(b)(2)(A)(i)(III), Tex. Water Code § 26.3475(a) and (c)(1), and Tex. Health & Safety Code § 382.085(b).

The hearing will allow Ali Syed a/k/a Syed Ali dba Chevron HP #333, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Ali Syed a/k/a Syed Ali dba Chevron HP #333, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Ali Syed a/k/a Syed Ali dba Chevron HP #333 to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Third Amended Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Ali Syed a/k/a Syed Ali dba Chevron HP #333, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and ch. 26, Tex. Health & Safety Code ch. 382, and 30 Tex. Admin. Code chs. 70, 155, and 334; and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code ch. 80 and 1 Tex. Admin. Code ch. 155.



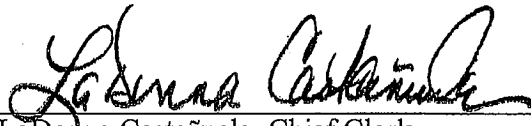
Further information regarding this hearing may be obtained by contacting Jennifer Cook, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512)239-3400. Information concerning hearing procedures and public participation in hearings may be obtained by contacting Blas Coy, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512)239-6363.

The original of any document filed prior to the hearing must be filed with the Office of the Chief Clerk, ATTN: SOAH Docket Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. When contacting the Commission regarding this application, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512)475-3445, at least one week before the hearing.

Issued: June 2, 2009

(Seal)

A handwritten signature in dark ink, appearing to read 'LaDonna Castañuela', is written over a horizontal line.

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Assessing Administrative Penalties Against and Ordering Corrective Action by Syed Ali and Ahmed Realty GP, L.L.C., both DBA Chevron HP #333, RN101775104; TCEQ Docket Nos. 2006-1471-PST-E and 2009- 0236-PST-E; SOAH Docket No. 582-10-1411

On _____, 2011, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Fourth Amended Report and Petition (FARP), which recommended that the Commission enter an order assessing administrative penalties against and requiring corrective action by Syed Ali and Ahmed Realty GP, L.L.C., both DBA Chevron HP #333 (Respondents). A Proposal for Decision (PFD) on Motion for Summary Disposition was presented by Tommy L. Broyles, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Respondents Syed Ali and Ahmed Realty GP, L.L.C. owned and operated a convenience store from at least June 22, 2006, through October 15, 2008, which is properly identified as Chevron HP #333 (Station) and is located at 8003 Antoine Drive, Houston, Harris County, Texas (Station).
2. The Station has an underground storage tank (UST) containing a regulated petroleum substance.

3. On June 22, 2006, the Station was in violation of:
 - a. 30 TEX. ADMIN. CODE §§ 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system. Specifically, the swivel adapters were not installed on the Stage I dry break and product fill ports.
 - b. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the Station did not put the automatic tank gauge into test mode at least once a month.
 - c. 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a) by failing to monitor the pressurized piping associated with the UST system in a manner designed to detect releases from any portion of the piping system. Specifically, the Station did not conduct the annual piping tightness testing nor the monthly monitoring of the piping associated with the UST system.
 - d. 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) by failing to test the line leak detectors at least once per year for performance and operational reliability.
4. On October 15, 2008, the Station's registration was not updated to reflect the current property owner information (this was determined pursuant to a TCEQ Staff record review).
5. On October 31, 2007, the Executive Director (ED) issued to Syed Ali (Ali) its Preliminary Report and Petition which contained allegations concerning the above-noted June 22, 2006 violations.
6. After receipt of the Preliminary Report and Petition, Ali timely filed a response and requested a hearing.
7. This matter was subsequently transferred to SOAH and on June 2, 2009, the initial notice of public hearing was issued to Ali.
8. On July 30, 2009, a preliminary hearing was held in SOAH Docket No. 582-09-3850.

9. On June 24, 2009, the ED issued its Preliminary Report and Petition containing the allegations of the above violations to Ahmed Realty GP, L.L.C (Ahmed).
10. After receipt of the Preliminary Report and Petition, Ahmed filed a timely response and requested a hearing.
11. This matter was assigned SOAH Docket No. 582-10-1411 when transferred to SOAH, and on November 30, 2009, the initial notice of public hearing was issued to Ahmed.
12. The above noted notices of hearing:
 - a. Indicated the time, date, place, and nature of the hearing;
 - b. Stated the legal authority and jurisdiction for the hearing;
 - c. Indicated the statutes and rules the ED alleged Respondent violated.
 - d. Advised Respondent, in at least twelve-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and the previously filed ED's First Amended Report and Petition being deemed as true and the relief sought in the notice possibly being granted by default; and
 - e. Included a copy of the ED's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.
13. On January 21, 2010, a preliminary hearing was convened in Docket No. 582-10-1411.
14. On January 25, 2010, Docket Nos. 582-09-3850 and 582-10-1411 were consolidated and continued under the 582-10-1411 docket number.
15. On February 1, 2010, the ED's FARP containing allegations that Respondents committed the above June 22, 2006 and October 15, 2008 violations was mailed to Respondents.
16. The ED recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$8,060 against Respondents and that the Commission order Respondents to take certain corrective actions.

17. The \$8,060 administrative penalty sought in the FARP is an accumulation of the different penalties assessed for each violation.
18. The ED served Respondents with discovery requests on December 4, 2009, including interrogatories, requests for disclosure, requests for admissions, and requests for production.
19. Respondents did not respond to the ED's discovery requests by the original due date of January 6, 2010.
20. After the discovery due date, there was an additional preliminary hearing in this case and the parties subsequently filed a new and agreed deadline for discovery responses of May 1, 2010.
21. On May 18, 2010, the ED received an email from Mr. Ahmed containing discovery responses for both parties.
22. The ED filed a Motion to Compel on June 15, 2010, pointing out particular discovery that Respondents had failed to respond to.
23. On June 25, 2010, the ALJ issued an order granting the Motion to Compel and providing July 15, 2010, as the new discovery response deadline.
24. Respondents filed some discovery responses on July 14, 2010, but did not respond to the ED's request for admissions or interrogatory Nos. 12, 13, and 14.
25. On September 1, 2010, the ED filed its Motion for Summary Disposition.
26. On September 14, 2010, the ALJ noted that by operation of law the ED's Requests for Admission were deemed admitted and set the deadline for a response to the ED's Motion for Summary Disposition as September 24, 2010.

27. On September 24, 2010, Respondents filed a letter stating that they do not dispute the findings of the ED but requesting a reduction in the penalties based on current economic conditions and Respondents sincere efforts to comply with the Commission's rules.
28. On September 30, 2010, the ALJ granted the Executive Director's Motion for Summary Disposition, closed the record, and canceled the evidentiary hearing.
29. Respondents failed to offer any evidence that they are financially unable to pay an administrative penalty of \$8,060.
30. The corrective action requested by the ED is necessary, justified, and appropriate given the violations established.
31. Assessing an administrative penalty of \$8,060 against Respondents is reasonable and justified given the violations committed by Respondents and considering the factors set forth in TEX. WATER CODE § 7.053.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health and Safety Code within the Commission's jurisdiction, or of any rule, order, or permit adopted or issued thereunder.
2. Under TEX. WATER CODE § 7.052, a penalty may not exceed \$10,000 per violation, per day for the violations alleged in this proceeding.
3. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE § 7.073.
4. As required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondents were notified of the violations as contained in the ED's FARP of the opportunity to request a hearing on the alleged violations and the proposed penalties and corrective actions.

5. As required by TEX. GOV'T CODE §§ 2001.051(1) and 2001.052; TEX. WATER CODE § 7.058; 1 TEX. ADMIN. CODE § 155.401; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104; and 80.6, Respondents were notified of the hearing on the alleged violations and the proposed penalties and corrective actions.
6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ch. 2003.
7. Based on the Findings of Fact and Conclusions of Law, Respondents violated:
 - a. 30 TEX. ADMIN. CODE §§ 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board (CARB) Executive Order(s) and free of defects that would impair the effectiveness of the system.
 - b. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
 - c. 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a) by failing to monitor the pressurized piping associated with the UST system in a manner designed to detect releases from any portion of the piping system.
 - d. 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) by failing to test the line leak detectors at least once per year for performance and operational reliability.
8. Based on the Findings of Fact and Conclusions of Law, Respondents violated 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to have the Station's registration updated to reflect the current property owner information on October 15, 2008.
9. In determining the amount of an administrative penalty, TEX. WATER CODE § 7.053 requires the Commission to consider several factors including:
 - a. Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;

- b. The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - c. The history and extent of previous violations by the violator;
 - d. The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - e. The amount necessary to deter future violations; and
 - f. Any other matters that justice may require.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
11. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE § 7.053, and the Commission's Penalty Policy, the ED correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$8,060 is justified and should be assessed against Respondents.
12. Based on the above Findings of Fact, Respondents should be required to take the corrective action that the ED recommends.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Respondents Syed Ali and Ahmed Realty GP, L.L.C., both DBA Chevron HP #333 are assessed an administrative penalty in the amount of \$8,060 for violations of the above noted Commission rules. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order in this section. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments

shall be sent with the notation "Re: Syed Ali and Ahmed Realty GP, L.L.C., both DBA Chevron HP #333; Docket Nos. 2006-1471-PST-E and 2009-0236-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Within 45 days after the effective date of this Order, Respondents shall submit an amended registration to reflect the correct tank operator information, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Team
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

3. Within 60 days after the effective date of this order, Respondents shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be sent to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

with a copy to:

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Street, Suite H
Houston, Texas 77023-1452

4. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE § 2001.144.
7. The Commission's Chief Clerk shall forward a copy of this Order to Respondents.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

BRYAN W. SHAW, Chairman
For the Commission